

HB 249 CS

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CHAMBER ACTION

1 The Justice Council recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to the protection of persons and property;
7 creating s. 776.013, F.S.; authorizing a person to use
8 force, including deadly force, against an intruder or
9 attacker in a dwelling, residence, or vehicle under
10 specified circumstances; creating a presumption that a
11 reasonable fear of death or great bodily harm exists under
12 certain circumstances; creating a presumption that a
13 person acts with the intent to use force or violence under
14 specified circumstances; providing definitions; amending
15 ss. 776.012 and 776.031, F.S.; providing that a person is
16 justified in using deadly force under certain
17 circumstances; declaring that a person has no duty to
18 retreat and has the right to stand his or her ground and
19 meet force with force if the person is in a place where he
20 or she has a right to be and the force is necessary to
21 prevent death, great bodily harm, or the commission of a
22 forcible felony; creating s. 776.032, F.S.; providing
23 immunity from criminal prosecution or civil action for

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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24 using deadly force; defining the term "criminal
25 prosecution"; authorizing a law enforcement agency to
26 investigate the use of deadly force but prohibiting the
27 agency from arresting the person unless the agency
28 determines that there is probable cause that the force the
29 person used was unlawful; providing for the award of
30 attorney's fees, court costs, compensation for loss of
31 income, and other expenses to a defendant in a civil suit
32 who was immune from prosecution under this section;
33 providing an effective date.

34
35 WHEREAS, the Legislature finds that it is proper for law-
36 abiding people to protect themselves, their families, and
37 others from intruders and attackers without fear of prosecution
38 or civil action for acting in defense of themselves and others,
39 and

40 WHEREAS, the castle doctrine is a common-law doctrine of
41 ancient origins which declares that a person's home is his or
42 her castle, and

43 WHEREAS, Section 8 of Article I of the State Constitution
44 guarantees the right of the people to bear arms in defense of
45 themselves, and

46 WHEREAS, the persons residing in or visiting this state
47 have a right to expect to remain unmolested within their homes
48 or vehicles, and

49 WHEREAS, no person or victim of crime should be required to
50 surrender his or her personal safety to a criminal, nor should a

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51 person or victim be required to needlessly retreat in the face
52 of intrusion or attack, NOW, THEREFORE,

53
54 Be It Enacted by the Legislature of the State of Florida:

55
56 Section 1. Section 776.013, Florida Statutes, is created
57 to read:

58 776.013 Home protection; use of deadly force; presumption
59 of fear of death or great bodily harm.--

60 (1) A person is presumed to have held a reasonable fear of
61 imminent peril of death or great bodily harm to himself,
62 herself, or another when using defensive force that is intended
63 or likely to cause death or great bodily harm to another if:

64 (a) The person against whom the defensive force was used
65 was in the process of unlawfully and forcefully entering, or had
66 unlawfully and forcibly entered, a dwelling, residence, or
67 occupied vehicle, or if that person had removed or was
68 attempting to remove another against that person's will from the
69 dwelling, residence, or occupied vehicle.

70 (b) The person who uses defensive force knew or had reason
71 to believe that an unlawful and forcible entry or unlawful and
72 forcible act was occurring or had occurred.

73 (2) The presumption set forth in subsection (1) does not
74 apply if:

75 (a) The person against whom the defensive force is used
76 has the right to be in or is a lawful resident of the dwelling,
77 residence, or vehicle, such as an owner, lessee, invitee, or
78 titleholder, and there is not an injunction for protection from

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79 domestic violence or a written pretrial supervision order of no
80 contact against that person;

81 (b) The person or persons sought to be removed is a child
82 or grandchild, or is otherwise in the lawful custody or under
83 the lawful guardianship, of the person against whom the
84 defensive force is used;

85 (c) The person who uses defensive force is engaged in an
86 unlawful activity or is using the dwelling, residence, or
87 occupied vehicle to further an unlawful activity; or

88 (d) The person against whom the defensive force is used is
89 a law enforcement officer, as defined in s. 943.10(14), who
90 enters or attempts to enter a dwelling, residence, or vehicle in
91 the performance of his or her official duties and the officer
92 identified himself or herself in accordance with any applicable
93 law or the person using force knew or reasonably should have
94 known that the person entering or attempting to enter was a law
95 enforcement officer.

96 (3) A person, not engaged in an unlawful activity, who is
97 attacked in any other place where he or she has a right to be
98 has no duty to retreat and has the right to stand his or her
99 ground and meet force with force, including deadly force if he
100 or she reasonably believes it is necessary to do so, to prevent
101 death or great bodily harm to himself, herself, or another or to
102 prevent the commission of a forcible felony.

103 (4) A person who unlawfully and by force enters or
104 attempts to enter a person's dwelling, residence, or occupied
105 vehicle is presumed to do so with the intent to commit an
106 unlawful act involving force or violence.

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(5) As used in this section, the term:

(a) "Dwelling" means a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, that has a roof over it, including a tent, and is designed to be occupied by people lodging therein at night.

(b) "Residence" means a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest.

(c) "Vehicle" means a conveyance of any kind, whether or not motorized, which is designed to transport people or property.

Section 2. Section 776.012, Florida Statutes, is amended to read:

776.012 Use of force in defense of person.--A person is justified in using ~~the use of~~ force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to defend himself or herself or another against the ~~such~~ other's imminent use of unlawful force. However, a ~~the~~ person is justified in the use of deadly force and does not have a duty to retreat ~~only~~ if:

(1) He or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony; or

(2) Under those circumstances permitted pursuant to s. 776.013.

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134 Section 3. Section 776.031, Florida Statutes, is amended
135 to read:

136 776.031 Use of force in defense of others.--A person is
137 justified in the use of force, except deadly force, against
138 another when and to the extent that the person reasonably
139 believes that such conduct is necessary to prevent or terminate
140 ~~the such~~ other's trespass on, or other tortious or criminal
141 interference with, either real property other than a dwelling or
142 personal property, lawfully in his or her possession or in the
143 possession of another who is a member of his or her immediate
144 family or household or of a person whose property he or she has
145 a legal duty to protect. However, the person is justified in the
146 use of deadly force only if he or she reasonably believes that
147 such force is necessary to prevent the imminent commission of a
148 forcible felony. A person does not have a duty to retreat if the
149 person is in a place where he or she has a right to be.

150 Section 4. Section 776.032, Florida Statutes, is created
151 to read:

152 776.032 Immunity from criminal prosecution and civil
153 action for justifiable use of force.--

154 (1) A person who uses force as permitted in s. 776.012, s.
155 776.013, or s. 776.031 is justified in using such force and is
156 immune from criminal prosecution and civil action for the use of
157 such force, unless the person against whom force was used is a
158 law enforcement officer, as defined in s. 943.10(14), who was
159 acting in the performance of his or her official duties and the
160 officer identified himself or herself in accordance with any
161 applicable law or the person using force knew or reasonably

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162 should have known that the person was a law enforcement officer.

163 As used in this subsection, the term "criminal prosecution"
164 includes arresting, detaining in custody, and charging or
165 prosecuting the defendant.

166 (2) A law enforcement agency may use standard procedures
167 for investigating the use of force as described in subsection
168 (1), but the agency may not arrest the person for using force
169 unless it determines that there is probable cause that the force
170 used was unlawful.

171 (3) The court shall award reasonable attorney's fees,
172 court costs, compensation for loss of income, and all expenses
173 incurred by the defendant in defense of any civil action brought
174 by a plaintiff if the court finds that the defendant is immune
175 from prosecution as provided in subsection (1).

176 Section 5. This act shall take effect October 1, 2005.